

NEBRASKA DEPARTMENT
OF INSURANCE

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

NOV 24 2003

FILED

IN THE MATTER OF THE DENIAL OF) CAUSE NO.: A-1520
APPLICATION FOR LICENSE FOR)
TODD P. ADAMSON) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, RECOMMENDED ORDER
) AND ORDER

This matter came on for hearing on the 13th day of November 2003, before Christine M. Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. This matter arises out of a denial of an application for a resident insurance producer license. The Nebraska Department of Insurance ("Department") was represented by its legal counsel, Martin Swanson. Todd P. Adamson ("Applicant") was present. Applicant offered oral testimony and exhibits in support of his application. David Gutshall, a licensed insurance agent, testified on behalf of Applicant. The Department offered testimony and exhibits. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. The Rules of Evidence were not requested and the hearing was governed accordingly. The matter was taken under advisement. As a result of the hearing, the hearing officer hereby makes the following Findings of Fact, Conclusions of Law and Recommended Order.

FINDINGS OF FACT

1. The Department is the duly designated agency charged with regulating the business of insurance and with exercising jurisdiction and control over the licensing of insurance producers in the State of Nebraska pursuant to *Neb. Rev. Stat.* §44-101.01 and 44-4047 *et seq.*

2. On or about September 23, 2003, Applicant applied for a resident insurance producer's license. (Ex. 2). On said application, Applicant disclosed that he had previously held a Nebraska insurance agent license and that the State of Nebraska had taken disciplinary action against that license. Applicant also disclosed that he had been convicted of, or pled nolo contendere, to a misdemeanor or felony.

3. On or about September 24, 2003, Beverly Creager, Licensing Administrator for the Nebraska Department of Insurance, notified Applicant that his application for an insurance producer's license was denied based upon *Neb. Rev. Stat.* §44-4059(1)(b) and §44-4059(1)(i) and informed him of his option to make a written request for a hearing on the denial. (Ex. 2).

4. On or about October 19, 2003, Applicant requested a hearing, pursuant to *Neb. Rev. Stat.* §44-4059(2), to appeal the denial of the license. (Ex 2).

5. The Notice of Hearing filed November 5, 2003 was served upon the Applicant by Federal Express to the address of 2117 Central Avenue, Nebraska City, NE 68410. (Ex. 2). Applicant waived any objection to the manner in which he was served with the Notice of Hearing by appearing in person at the hearing.

6. Exhibit 2 shows Applicant previously held a Nebraska resident insurance agent license prior to May 17, 1995 upon which date he, while represented by counsel, waived his right to a public hearing and consented to the revocation of his insurance agent license. In the Consent Order, Applicant admitted to misappropriating funds belonging to policyholders . . . received in the course of business, not demonstrating trustworthiness and competency to transact the business of insurance in such a manner as to safeguard the public, and failing to be responsible in a fiduciary capacity for all funds

received or collected as an insurance agent. (Ex. 2). Respondent misappropriated funds in the amount totaling \$7,442.54 from insurance customers during the period of time from April 1, 1994 to September 12, 1994.

7. Applicant testified that he was charged with Theft By Unlawful Taking, a Class III felony, because of the misappropriation of funds and served 45 days in jail, made restitution to the victims, and was released from probation early. On July 6, 2000, an Order to Set Aside Conviction was entered in which Applicant's conviction was nullified and set aside. (Ex. 6). This, however, does not nullify the Department's prior Order.

8. Applicant testified that he owned his own insurance agency in 1994. During the period of time in which he misappropriated funds, Applicant was in the process of a divorce and had developed a substance abuse problem which affected his business. Applicant offered Exhibit 4, a copy of his Certificate of Achievement in recognition of the successful completion in the Independence Center Treatment Program dated December 6, 1995. Applicant also offered Exhibit 3 as evidence of his successful career as a licensed motor vehicle salesperson. Applicant has worked as a salesperson, finance manager, and sales manager for various car dealerships. Thus, Applicant has been gainfully employed following the revocation of his insurance agent license and his release from treatment.

9. David Gutshall testified he has known Applicant for 35 years when the two were growing up in O'Neill, Nebraska. Mr. Gutshall knew Applicant during his difficulties in 1995 and testified that he did not want to be associated with Applicant then. Mr. Gutshall is a licensed insurance agent self-employed with his own agency and

intends to enter into a business endeavor with Applicant if Applicant is granted a license. He is confident that Applicant will not make the same mistakes in the future that he has made in the past.

10. Applicant testified that he was responsible for his actions in 1995 and he would not repeat the mistakes he had made in the past. It is apparent to the hearing officer that Applicant has made significant progress in improving his life since the incidents in 1994-1995. However, the hearing officer finds that Respondent's previous acts to misappropriate funds were egregious acts that directly harmed policyholders and cannot be disregarded.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Applicant to sell insurance in the State of Nebraska pursuant to *Neb. Rev. Stat.* §44-101.01 and §44-4047 et seq.
2. The Department has personal jurisdiction over Applicant.
3. The previous disciplinary action against Applicant in State of Nebraska Department of Insurance vs. Todd P. Adamson, Cause No.: A-1196 constitutes a sufficient basis to deny Applicant a license pursuant to *Neb. Rev. Stat.* §44-4059(1)(i).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the Director of Insurance deny Applicant's request for an insurance producer's license.

Dated this 21st day of November, 2003.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department for Cause No.: A-1520, In the Matter of the Denial of Application for License for Todd P. Adamson.

Dated this 24th day of November, 2003.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon Applicant by mailing same to him at 2117 Central Avenue, Nebraska City, NE 68410 on this 24th day of November, 2003 by certified mail, return receipt requested.

